

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA, ET AL.)
)
Plaintiffs,)
)
v.) CIVIL ACTION NO. H-95-1118
)
KOCH INDUSTRIES, INC., ET AL.)
)
Defendants.)
)
_____)

CONSENT DECREE

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I. BACKGROUND

Whereas, on April 17, 1995, the United States, at the request of the United States Environmental Protection Agency and the U.S. Coast Guard, filed this civil action against Defendants Koch Industries, Inc. et al. pursuant to the Clean Water Act, 33 U.S.C. § 1251 et seq. (“CWA”), as amended by the Oil Pollution Act of 1990, Pub. L. 101-380, 104 Stat. 484 (“OPA”), seeking injunctive relief and civil penalties for the discharge of crude oil and petroleum products into navigable waters or adjoining shorelines of the United States;

Whereas, on February 11, 1997, the State of Texas, at the request of the General Land Office of Texas, filed a complaint in intervention in this action against Defendants Koch Industries, Inc. et al. pursuant to the CWA, as amended by OPA, seeking injunctive relief and civil penalties for the discharge of crude oil and petroleum products into navigable waters or adjoining shorelines of the United States in Texas and in other areas in Texas;

Whereas, on July 28, 1997, the United States, at the request of the United States Environmental Protection Agency and the U.S. Coast Guard, filed Civil Action No. 97-CV687B(W) in the Northern District of Oklahoma against Defendants, Koch Industries, Inc. et al. pursuant to the CWA, as amended by OPA, seeking injunctive relief and civil penalties for the discharge of crude oil and petroleum products into navigable waters or adjoining shorelines of the United States;

Whereas, on November 3, 1997, the State of Texas, at the request of the Railroad Commission of Texas, filed a complaint in intervention in Civil Action No. 97-CV687B(W) in the Northern District of Oklahoma against Defendants Koch Industries, Inc. et al. pursuant to the CWA, as amended by OPA, seeking injunctive relief and civil penalties for the discharge of crude oil and petroleum products into navigable waters or adjoining shorelines of the United States in Texas and

other areas in Texas, and in its January 26, 1998 amended complaint, seeking injunctive relief and penalties for violations of § 85.381 of the Texas Natural Resources Code;

Whereas, the Defendants have disputed issues regarding, among other things, the jurisdictional reach of the CWA, as amended by OPA, the quantities of discharged material, and the proper measure of any civil penalty or injunctive relief to be assessed with regard to the discharge events at issue, and contend that they have already taken good faith steps to clean up discharges and to substantially reduce the number of discharges occurring from their crude oil and refined products pipelines;

Whereas the Plaintiffs and Defendants in these two actions have engaged in lengthy and protracted litigation and now seek to settle these matters amicably without further litigation;

Whereas, the Defendants, by entering into this Consent Decree, do not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in any of the complaints; and,

Whereas, the Parties to this Consent Decree desire to resolve this matter and the related matter pending in the U.S. District Court for the Northern District of Oklahoma, Civil Action No. 97-CV687B(W), without further litigation, and agree to do so through the entry of the following Consent Decree, and this Court finds by entering this Consent Decree, that the Parties have negotiated this Consent Decree in good faith, and that the settlement embodied by this Consent Decree is fair, reasonable, and in the public interest:

THEREFORE, with the consent of the Parties to this Consent Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the Parties and venue is proper in this Court. The parties

agree to the entry of this Consent Decree by this Court.

III. **PARTIES BOUND**

2. This Consent Decree applies to and is binding upon the United States, the State of Texas, and the Defendants. Any change in ownership of the Defendants or corporate status of the Defendants shall in no way alter the Defendants' responsibilities under this Consent Decree.

IV. **DEFINITIONS**

3. Unless otherwise expressly provided herein, the terms used in this Consent Decree shall have the meaning assigned to them in the CWA, as amended by the OPA, or in such regulations promulgated thereunder. Whenever the terms defined below are used in this Consent Decree or in the Appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Affiliated" shall mean directly, or indirectly through one or more intermediaries, controlling of, or controlled by, or under common control with.

b. "API Provisions" shall mean those provisions set forth by the American Petroleum Institute pertaining to the construction, maintenance, and/or operation of crude oil and refined petroleum product pipelines.

c. "ASME Provisions" shall mean the provisions set forth by the American Society of Mechanical Engineers pertaining to the construction, maintenance, and/or operation of crude oil and refined petroleum product pipelines.

d. "Consent Decree" shall mean this written agreement and all Appendices attached hereto and any modifications of the agreement or the Appendices.

e. "Day" shall mean a calendar day unless the Consent Decree expressly refers to a Working Day. "Working Day" shall mean a day other than a Saturday, Sunday, or Federal or State of Texas

holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday or Federal or State of Texas holiday, the period shall run until the close of business of the next Working Day.

f. “Defendants” shall mean Koch Industries, Inc., Koch Oil Company, Koch Pipeline Company, L.P., Koch Gathering Systems, Inc., Koch Refining Company, L.P., Koch Service, Inc., Koch Materials Company, Chase Pipe Line Company, Bow Pipe Line Company, Citronelle Pipeline Co., their affiliated assigns, and their affiliated successors.

g. “DOT” shall mean the U.S. Department of Transportation and any successor departments or agencies.

h. “Discharge” shall have the same meaning as in Section 2701(7) of the OPA, meaning any emission (other than natural seepage), intentional or unintentional, and includes spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

i. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies.

j. “NACE Provisions” shall mean the provisions set forth by the National Association of Corrosion Engineers pertaining to the construction, maintenance, and/or operation of crude oil and refined petroleum product pipelines.

k. “Paragraph” shall mean a portion of this Consent Decree identified by an arabic numeral.

l. “Plaintiffs” shall mean the United States on behalf of the U.S. Coast Guard and EPA, and the State of Texas.

m. “Parties” shall mean the United States of America, the State of Texas, and the

Defendants. n. “ Responsible Official of the Defendants” shall mean any officer of the Defendants who is in charge of a principal business function, or any other person who performs similar decision making functions for the Defendants, or a person named in a certificate of delegation which designates the authority of that individual to sign documents which binds the Defendants to the terms of such documents.

o. “Section” shall mean a portion of this Consent Decree identified by a roman numeral.

p. “Sound Industry Practice” shall mean practice consistent with reasonable and prudent operations in the industry, including, as applicable, compliance with API Provisions, NACE Provisions, ASME Provisions, and company standards.

q. “United States ” shall mean the United States of America.

r. “U.S. Coast Guard” shall mean the United States Coast Guard and any successor entities.

V. GENERAL PROVISIONS

4. This Consent Decree resolves Plaintiffs’ claims against Defendants for civil penalties and injunctive relief (except any claims for cleanups regarding the settled discharges) arising (1) from the discharges set forth in the complaints and any amended complaints in this civil action and Civil Action No. 97CV697B(W) in the Northern District of Oklahoma and (2) from the additional discharges identified in Appendix A hereto. The Parties agree to bear their own legal costs, fees (including attorney and expert witness fees), and expenses incurred as a result of the subject civil actions. This Consent Decree shall not constitute any admission for any purpose by any of Defendants or Plaintiffs as to each other or any third party.

5. Compliance with Applicable Law: Except as expressly provided herein, nothing in this Consent Decree shall in any way excuse Defendants from their obligation to comply with the

requirements of all Federal, State, or local laws, permits, and regulations. In particular, nothing in this Consent Decree relieves Defendants from the duty to comply with, or changes the requirements of, the pipeline safety law, 49 U.S.C. § 60101 et seq., the pipeline safety standards adopted under that law (49 C.F.R. Parts 190-199), or applicable orders issued by DOT under that law.

6. The obligations of Defendants under Section VII (Operating Requirements) of this Consent Decree shall remain in effect for a period of three (3) years from the Effective Date of the Consent Decree; provided, however, that with regard separately to each plan put forward by Defendants under Section VII (Operating Requirements), the obligations with regard to that plan shall remain in effect either until the expiration of the foregoing three-year period or the expiration of 24 months following the implementation of the plan by Defendants, whichever period expires last. Within thirty (30) days of implementation of each plan, Defendants shall provide Plaintiffs with written notice of the date of such implementation.

VI. PAYMENT OF CIVIL PENALTIES

7. To resolve Federal and State-law claims as provided for herein, within thirty (30) days of entry of this Consent Decree, Defendants shall pay to Plaintiffs a civil penalty of thirty million dollars (\$30,000,000). Of this amount, Defendants shall pay fifteen million dollars (\$15 million) to the United States, and fifteen million dollars (\$15 million) to the State of Texas. Each Plaintiff shall have exclusive control of the civil penalties paid to it.

Out of the payment to the State of Texas:

-- the sum of \$6 million shall be denominated as a penalty within the meaning of § 81.0531 of the Texas Natural Resources Code, and shall be deposited into the Oil-Field Cleanup Fund pursuant to §91.111(c)(19) of the Texas Natural Resources Code.

-- the sum of \$3 million shall be denominated as a penalty within the meaning of §40.251 of the Texas Natural Resources Code, and shall be deposited into the Coastal Protection Fund pursuant to §40.151 of the Texas Natural Resources Code.

-- the Attorney General of Texas shall recover \$450,000 as reasonable attorneys' fees for work done by the Office of the Attorney General in these cases. These payments are exclusive of any amounts owed by the State of Texas to outside counsel for attorneys' fees and expenses related to this case.

-- outside counsel for the State of Texas may recover reasonable attorneys' fees, investigative costs, and expenses for representation in these cases, subject to approval by the State of Texas.

A) All payments to the United States shall be made by electronic funds transfer (EFT). The EFT will be prepared by the United States Attorney's Office, Financial Litigation Unit (FLU), for the Southern District of Texas. Defendant(s) must contact the FLU within the thirty (30) day payment period to notify the FLU of the date when payment is to be made so that the FLU, in turn, may notify the U.S. Department of Justice, Debt Accounting Operation Group accordingly. The person at the FLU to contact is Debra Gregory (713-567-9543). The FLU will prepare the FEDWIRE Electronic Funds Transfer Form containing the appropriate Bank Code, Bank Name and Account Number and shall send it to the Defendant, by facsimile, to present to Defendant(s) bank.

B) All payments to the State of Texas shall be made by EFT to the Comptroller of Public Accounts, State of Texas, for the Attorney General's Suspense Account, using the following instructions:

Financial Institution: TX COMP AUSTIN

Routing Number: 114900164
Account Name: Comptroller of Public Accounts - Treasury Operations
Account Number to Credit: 463600001
Reference: (to be filled in by Remitter: e.g., Remitter's Name, Case Style, Attorney)
Attention: Chief, Natural Resources Division, Office of the Attorney General (475-4001)
Contact: Abel Rosas (512) 475-4380

Defendants shall send notice to both Federal and State Plaintiffs that such payments have been made, as specified in Section XVI (NOTICES).

8. The United States and the State of Texas shall be deemed judgment creditors for purposes of collection of any penalties under this Consent Decree. Penalty payments made pursuant to this Consent Decree shall not be tax deductible for federal tax purposes. Upon payment in accordance with Paragraph 7 above, the judgment will automatically be released as to the penalties paid.

9. If Defendants fail to timely make any payment as required under this Consent Decree, then, commencing the day after payment is due, Defendants shall be liable for interest on the unpaid balance at the federal judgment interest rate computed in accordance with 28 U.S.C. § 1961, as of the date payment is due, and, if incurred, the costs of enforcement and collection pursuant to the Federal Debt Collection Procedure Act, 28 U.S.C. § 3001 *et seq.*

VII. **OPERATING REQUIREMENTS**

10. **General Provisions:** The operating requirements in this Consent Decree apply to all crude oil and/or refined petroleum product pipelines (except the Chase Pipe Line and Minnesota Pipeline) that Defendants own and/or operate (except inactive pipelines), within the territorial jurisdiction of the United States, at the Effective Date of this Consent Decree. Such pipelines owned and/or operated as of the date the Defendants executed this Consent Decree are listed in Appendix B hereto (hereinafter referred to as "Subject Pipelines"). Appendix B shall be updated as appropriate by

Defendants within ten (10) days of the date of entry of this Consent Decree to list such pipelines owned and/or operated by the Defendants as of the Effective Date of this Consent Decree. In the event Defendants place any inactive crude oil or refined petroleum product pipelines that were owned and/or operated by Defendants as of the Effective Date of this Consent Decree into service for the transportation of crude oil and/or refined petroleum products during the duration of this Consent Decree, Defendants shall notify Plaintiffs thirty (30) days prior to such activation, and that pipeline would then be added to the Subject Pipelines, and these operating requirements shall apply to those pipelines as well. In the implementation of the following operating requirements, the Defendants shall adhere to Sound Industry Practice and applicable State law.

11. **Initial Assessments:** Defendants shall conduct new assessments or complete previous or ongoing assessments (internal and external inspections, tests, and/or surveys) of the Subject Pipelines and shall repair, retool, recondition, and/or replace any pipeline in accordance with Sound Industry Practice. Within ninety (90) days of the entry of this Consent Decree, Defendants shall submit a plan to Plaintiffs that adequately describes the method in which the assessments have or will be made. Plaintiffs reserve the right to review and suggest specific changes to the plan within forty-five (45) days of its receipt. Any such suggested changes from Plaintiffs will be delivered in writing to Defendants by no later than the 45th day following receipt. Within fifteen (15) days after receipt of any such suggestions by Plaintiffs, Defendants will respond to Plaintiffs in writing with any amended plan and a written confirmation that Plaintiffs' suggested changes were adopted, or if any suggested changes were not fully adopted, an explanation of the reasons for not incorporating the changes.

Defendants shall commence any pipeline assessments not already completed in a manner

that is consistent with the Defendants' plan as it may have been amended by any suggestions received from Plaintiffs and incorporated into the plan. Defendants may utilize pertinent data from any prior applicable pipeline risk assessment in completing this requirement. These assessments will be completed within the time constraints set forth in the plan. Any pipeline reconditioning identified as necessary by these initial pipeline assessments in accordance with Sound Industry Practice must be completed within two (2) years from the Effective Date of this Consent Decree.

12. Leak Detection/ Leak Prevention Program: Defendants shall complete the development and implementation of leak detection and leak prevention programs in accordance with Sound Industry Practice and applicable State law. Within ninety (90) days of the entry of this Consent Decree, Defendants shall submit a plan to Plaintiffs adequately describing the leak detection and leak prevention program. Plaintiffs reserve the right to review and suggest specific changes to the plan within forty-five (45) days of its receipt. Any such suggested changes from Plaintiffs will be delivered in writing to Defendants by no later than the 45th day following receipt. Within fifteen (15) days after receipt of any such suggestions by Plaintiffs, Defendants will respond to Plaintiffs in writing with any amended plan and a written confirmation that Plaintiffs' suggested changes were adopted, or if any suggested changes were not fully adopted, an explanation of the reasons for not incorporating the changes. Defendants shall implement the leak detection/leak prevention program in a manner that is consistent with the Defendants' plan as it may have been amended by any suggestions received from Plaintiffs and incorporated into the plan. Defendants shall include the following in the leak prevention and leak detection program:

A) A pipeline testing program aimed at the early detection of internal and external corrosion and other pipeline defects;

B) Analysis of risk assessment criteria to prioritize efforts to prevent pipeline leaks and spills;

C) A system for monitoring and tracking pipeline leaks and spills;

D) A system for managing: (i) abandoned and/or inactive pipelines that are connected to active pipelines on the Effective Date of this Consent Decree; (ii) pipelines that are to be abandoned and/or removed from service; (iii) pipelines returned to service after abandonment or inactivity;

E) A program to analyze the need for, and to provide as necessary, additional protection (including, as appropriate, cover) for exposed pipeline, including exposed pipeline at waterways;

F) A system for determining and recording maximum operating pressure (MOP) on the pipelines and for ensuring that the pipelines are operated in accordance with those MOPs; and

G) A program for insuring that line markers are placed and maintained appropriately for the pipelines.

13. **Maintenance and Inspection Program:** The Defendants shall complete the development and implementation of a maintenance and inspection program in accordance with applicable law and Sound Industry Practice. Within ninety (90) days of the entry of this Consent Decree, the Defendants shall submit a plan to Plaintiffs adequately describing the maintenance and inspection program to be implemented by Defendants. Plaintiffs reserve the right to review and suggest specific changes to the plan within forty-five (45) days of its receipt. Any such suggested changes from Plaintiffs will be delivered in writing to Defendants by no later than the 45th day following receipt. Within fifteen (15) days after receipt of any such suggestions by Plaintiffs, Defendants will respond to Plaintiffs in writing with any amended plan and a written confirmation that Plaintiffs' suggested changes were adopted, or if any suggested changes were not fully adopted, an explanation of the

reasons for not incorporating the changes. Defendants shall implement the maintenance and inspection program in a manner that is consistent with the Defendants' plan as it may have been amended by any suggestions received from Plaintiffs and incorporated into the plan. Defendants shall include the following in the maintenance and inspection program:

A) A program aimed at preventing or inhibiting corrosion, including cathodic protection (for example: installation, operation, and maintenance of rectifier units for effective corrosion control on the pipelines);

B) A testing/monitoring program (including smart pigging, where applicable) for early detection of corrosion;

C) A program for performing, as applicable, pipe-to-soil surveys for the pipelines and follow-up maintenance and repair;

D) A program for the installation, operation, and maintenance of pressure monitoring/recording equipment at the pipelines (including pump stations);

E) A program for the performance of periodic visual inspections of pipelines, including the surface conditions on or adjacent to each pipeline right-of-way;

F) A monitoring program (for example, a coupon monitoring program) to monitor the effectiveness of internal corrosion prevention measures; and

G) A program to prepare and maintain mapping documentation of all Subject Pipelines, irrespective of size or diameter of the line, as required by Sound Industry Practice and applicable State law, including submission to appropriate emergency response organizations of copies of such pipeline mapping documentation which includes information regarding shut off or pressure relief valves.

14. **Training Program:** Defendants shall complete the development and implementation of a training program for personnel (including contractors), as appropriate, in corrosion control, leak detection and prevention, emergency response operations, pipeline systems operation and maintenance, reporting, applicable state regulatory requirements and environmental risk management in accordance with Sound Industry Practice. Within ninety (90) days of the entry of this Consent Decree, Defendants shall submit a plan to Plaintiffs adequately describing the training program. Plaintiffs reserve the right to review and suggest changes to the plan within forty-five (45) days of its receipt. Any such suggested changes from Plaintiffs will be delivered in writing to Defendants by no later than the 45th day following receipt. Within fifteen (15) days after receipt of any such suggestions by Plaintiffs, Defendants will respond to Plaintiffs in writing with any amended plan and a written confirmation that Plaintiffs' suggested changes were adopted, or if any suggested changes were not fully adopted, an explanation of the reasons for not incorporating the changes. Defendants shall implement the training program in a manner that is consistent with the Defendants' plan as it may have been amended by suggestions received from Plaintiffs and incorporated into the plan. The foregoing training shall be conducted by qualified instructors.

15. **Third Party Auditor:** The Defendants' development and implementation of the operating requirements described in this Section shall be audited by an independent third-party auditing firm ("Auditor") retained and compensated by Defendants and approved by Plaintiffs. Within forty-five (45) days of entry of this Consent Decree Defendants shall provide Plaintiffs with the identity and qualifications of the proposed Auditor. Plaintiffs shall not unreasonably withhold approval of any Auditor proposed by Defendants. Plaintiffs shall have thirty (30) days from receipt of Defendants' proposal to approve or disapprove the proposed Auditor. If Plaintiffs disapprove the proposed

Auditor, Defendants must propose additional Auditors until Plaintiffs approve the Auditor. If Defendants wish to change Auditors, Defendants shall notify Plaintiffs in writing, provide good cause for the change, and shall propose another Auditor to Plaintiffs for approval. Any subsequent Auditor must satisfy the requirements of this paragraph.

A) The Auditor's auditing teams shall be comprised of qualified personnel, with scientific or engineering degrees and experience, knowledge and expertise, as appropriate to the aspect being audited, in the operation of oil pipelines, the environmental effects of the operation of oil pipelines and related operations, and the auditing of all such operations, and shall include at least one environmental auditor (qualified within the meaning of ISO 14012).

B) The members of the Auditor's audit teams shall also be cognizant of the laws, regulations, codes, and standards pertaining to the pipelines, as appropriate to the aspect being audited.

C) The Auditor shall have no interests in any of the Defendants' businesses and/or operations and the Auditor and Defendants shall provide Plaintiffs with certified statements of no interest.

D) The Auditor shall annually audit the programs Defendants have implemented to meet the operating requirements of this consent decree, to (1) determine if these programs conform to the requirements specified in this Consent Decree and in the Defendants' plans, and (2) identify any deviations from Sound Industry Practice and applicable law. The Auditor shall conduct an independent review of the programs. Defendants shall provide the Auditor with any information requested, as appropriate to the aspect being audited, and shall provide access to any of its operations to the Auditor for purposes of the audits. The Auditor shall provide program status reports to

Plaintiffs as described in the reporting section below (Section IX).

16. **Transfer of pipeline:** Defendants shall not sell, lease, or otherwise transfer any interest in any of the Subject Pipelines without making available to the party(ies) involved in the subject transaction all material operations and maintenance records, in Defendants' possession or control, regarding the condition of the pipeline, as determined by inspection, testing, visual observation, or other assessment. Defendants shall notify Plaintiffs at least thirty (30) days prior to any transfer of interest of the identity, business address, phone number, and state of incorporation of the transferee.

VIII. ENVIRONMENTAL PROJECTS

17. Defendants shall perform the following environmental projects:

A) Pipeline Safety Education Project

Defendants shall spend no less than \$1.0 million on a pipeline safety education project, regarding pipelines in the states of Texas, Oklahoma and Kansas, designed to educate the public and the regulated community about improvements to pipeline operation and maintenance which will reduce or eliminate spills. To design and implement this project Defendants will provide funding to a university or other educational institution, subject to the approval of Plaintiffs, with expertise in pipeline design and safety to design a curriculum drawing upon: existing studies in the field, including those addressing major weaknesses in pipelines, including corrosion, third-party damage, operator error, and design defects; available data on size, age, type of product, etc., for crude oil and refined petroleum product lines; reported data on spills; and other appropriate information.

From these data sets the institution shall develop recommendations on:

- (a) accident prevention improvements;
- (b) steps for the prevention of spills; and

(c) possible remediation approaches.

As part of this project Defendants shall require the educational institution to work with appropriate public and private entities, including Defendants, in developing the curriculum design (which shall be submitted to Plaintiffs for approval) and distributing the findings to the public and to the regulated community in order to foster improvement in pipeline safety. Within six (6) months of the Effective Date of this Consent Decree, Defendants shall submit a plan for this project to EPA for approval. Defendants shall ensure that this project is completed in accordance with the plan approved by EPA. Such approval shall not be unreasonably withheld. In the event Defendants fail to expend the \$1.0 million for this project as specified herein, Defendants shall pay any portion of the \$1.0 million not so expended to the United States as an additional civil penalty to be paid in the manner provided in Section VI (Payment of Civil Penalties).

B) Acquisition of Property Project

At the time of entry of this Consent Decree, Defendants shall place in an interest bearing escrow account (the “Escrow Account”), \$1.5 million, to be used, along with accrued interest, solely for acquisition, enhancement, and maintenance of wetlands, aquatic property, semi-aquatic property, or prairie containing waterways, appropriate for preservation as wetlands or wildlife habitat, in Oklahoma and Kansas. The acquired property shall be used for the purpose of creating new environments, enhancing existing environments, or protecting, restoring, and improving wildlife habitat and water quality.

Within six (6) months of the entry of this Consent Decree, Defendants shall provide EPA with a proposal for the expenditures set forth above proposing acquisition of at least two parcels of property which are available for acquisition and which meet the requirements of this Paragraph, and

describing the acquisition, enhancement, and maintenance proposed. At least one parcel will be in Kansas, and at least one parcel will be in Oklahoma. The acquisition, enhancement, and maintenance proposal, including proposed project manager(s), must be reviewed and approved by EPA prior to its implementation. Such approval shall not be unreasonably withheld. Defendants shall use their best efforts to accomplish the approved acquisitions within three (3) months of Defendants' receipt of EPA's approval and in no event later than six (6) months after approval.

Any property that is purchased with funds from the Escrow Account shall be held by the purchaser and future owners consistent with the purposes of this Paragraph and shall be maintained in perpetuity as wetlands or wildlife habitat. Defendants shall put in place, or require the acquiring entity to put in place, a permanent conservation easement on the acquired property consistent with applicable state law. In the event Defendants fail to expend the \$1.5 million for this project as specified herein, Defendants shall pay any portion of the \$1.5 million not so expended to the United States as an additional civil penalty to be paid in the manner provided in Section VI (Payment of Civil Penalties).

C) State of Texas Environmental Projects

Defendants shall spend no less than \$2.5 million to conduct projects in the State of Texas shown on Appendix C. The projects will be conducted in the Counties shown, for the purposes that are shown, and subject to the limitations that are shown on Appendix C. Defendants shall provide payment to the entities designated and in the amounts designated on Appendix C within thirty (30) days from the date of entry of this Consent Decree. Defendants shall obtain from the Texas Natural Resources Conservation Commission ("TNRCC") instructions regarding payment, and shall notify the TNRCC concurrent with making each payment. Notice shall be made by regular mail or telecopy

to: Scottie Aplin, TNRCC Legal Division, P.O. Box 13087(MC-175), Austin, Texas, 78711-3087, Fax # 512-239-3434. In the event Defendants fail to expend the \$2.5 million for these projects as specified herein, Defendants shall pay any portion of the \$2.5 million not so expended to the State of Texas as an additional civil penalty to be paid in the manner provided in Section VI (Payment of Civil Penalties).

IX. **REPORTING REQUIREMENTS**

18. Beginning on the date of entry of this Consent Decree and until termination of this Consent Decree, Defendants shall submit semi-annual status reports to Plaintiffs and the Auditor setting forth all actions taken to comply with the provisions of this Consent Decree, the dates of such actions, and any failure to meet the requirements of the Consent Decree. The first such report will be due six months following the Effective Date of the Consent Decree with subsequent reports due at six-month intervals thereafter. If requested by Plaintiffs or the Auditor, Defendants shall meet with Plaintiffs and/or the Auditor to discuss the Defendants' compliance with the terms of this Consent Decree.

A.) Defendants shall attach to each semi-annual status report an itemized list of:

- 1) All technical reports generated by Defendants or their contractors or agents pursuant to this Consent Decree; and,
- 2) All surveys, test results, inspection reports, incident reports, and repair reports generated by Defendants or their contractors or agents pursuant to this Consent Decree.

Defendants shall provide Plaintiffs or the Auditor with copies of any of the documents on the itemized list or any related data and information upon request.

B). The Auditor shall submit annual reports to Plaintiffs within sixty (60) days of the end of

each successive twelve-month period following the Effective Date of this Consent Decree, providing the Auditor's analysis and conclusions for that period. Each such report shall include a section for each Consent Decree requirement, a description of the Defendants' activities to meet the Consent Decree requirements, a determination of whether the Defendants' programs conform to the requirements specified in this Consent Decree and in the Defendants' plans, and an assessment of each program's performance, including assessments of any deviations from Sound Industry Practice and applicable law. The reports shall also identify the specific information relied upon for the analysis and conclusions.

19. All submissions by Defendants to Plaintiffs regarding the Defendants' compliance with the terms of this Consent Decree shall be accompanied by a cover letter signed by a Responsible Official of Defendants which attests to the accuracy of the submission. Each submission must also be accompanied by the following certification signed by a Responsible Official of Defendants:

I certify that the information contained in or accompanying this submission is true, accurate and complete. As to those identified portions of this submission for which I cannot personally verify the truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting upon my direct instructions, made the verification, that this information is true, accurate, and complete.

X. RECORDS RETENTION

20. For one year after the termination of this Consent Decree, Defendants shall preserve and retain all material records, documents, and information currently in their possession or control or which come into their possession or control and which relate in any manner to the performance of the operating requirements under this Consent Decree, regardless of any corporate retention policy to the contrary. Defendants may at their election keep such documents on computer disks, microfiche, or such other media as they deem appropriate.

XI. ACCESS

21. Upon entry of this Consent Decree, Defendants agree to provide the United States and the State of Texas, and the Auditor, including contractors, and other authorized persons performing actions at the direction of the United States, State of Texas or the Auditor, prompt access, at all reasonable times to all property on which the subject pipelines and other related facilities are located for:

A) Verifying compliance with the terms of this Consent Decree;

B) Verifying any data or information submitted by Defendants pursuant to this Consent Decree; and,

C) Performing or observing the activities of the Auditor under this Consent Decree.

22. Notwithstanding any provisions of this Consent Decree, the United States and the State of Texas retain all rights of access, information gathering, and response authorities, under the CWA, OPA, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et. seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et.seq., State law, and any other applicable statutes or regulations.

23. Defendants shall provide the United States and the State of Texas, upon request, copies of all material records, documents and information currently within or which come into their possession or control and which relate to factual information regarding the implementation of this Consent Decree, including without limitation, reports, correspondence, or other documents or information related to the work performed pursuant to this Consent Decree.

24. No provision of this Consent Decree shall be interpreted as a waiver of any privilege, including, but not limited to the attorney-client communications privilege or the work product exemption, or

as a waiver of any proprietary interest in confidential business information. Additionally, nothing herein shall be construed to require Defendants to submit privileged or confidential business information to Plaintiffs. Defendants shall not attempt, however, to assert any such claims regarding plans, notices, correspondence or reports required to be submitted to Plaintiffs under this Consent Decree. This shall not affect any rights Defendants may have to claim business confidentiality or privilege regarding other records or information that may be requested by Plaintiffs under this Consent Decree or otherwise.

XII. STIPULATED PENALTIES

25. Defendants shall be liable to Plaintiffs for stipulated penalties in the amounts set forth in this Section for failure to comply with their enumerated obligations under this Consent Decree unless excused under the FORCE MAJEURE Section.

26. The stipulated penalties are as follows:

<u>Period of Noncompliance</u>	<u>Penalty for Noncompliance</u>
1st through 15th day	\$1,000 per violation, per day or portion thereof
16th through 30th day	\$1,750 per violation, per day or portion thereof
31st day and beyond	\$2,500 per violation, per day or portion thereof

27. Any stipulated penalties paid by Defendants shall be paid 50% to the United States and 50% to the State of Texas in accordance with the payment instructions in Section VI above.

28. Stipulated penalties shall automatically begin to accrue on the first day Defendants fail to satisfy any obligation or requirement of this Consent Decree and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity, except that: (1) for stipulated penalties related to any failure to use Sound Industry Practice, the stipulated penalties shall automatically begin to accrue on the first day Defendants are aware or, through the exercise of

reasonable diligence, should have been aware, of a failure to satisfy the obligation or requirement; and, (2) with respect to judicial review by this Court of any dispute under Section XIII (Dispute Resolution), stipulated penalties shall not accrue during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding such dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree. In the event Plaintiffs determine that Defendants are out of compliance with any terms of this Consent Decree, Plaintiffs shall expeditiously notify Defendants of that determination.

29. Stipulated penalties shall be payable by Defendants upon written demand by Plaintiffs identifying the violations. Defendants shall, within thirty (30) days of receipt of such demand, either pay the amount demanded or notify Plaintiffs in writing of each violation they deny and the basis for that denial. If Defendants invoke dispute resolution and the Plaintiffs' position is upheld, then Defendants shall pay all accrued penalties, including those accruing during dispute resolution, within fifteen (15) days of the resolution of the dispute.

30. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiffs, by virtue of the Defendants' failure to comply with the requirements of this Consent Decree or any applicable statutes or regulations.

XIII. DISPUTE RESOLUTION

31. The dispute resolution procedures in this Section shall be the exclusive mechanism for resolving disputes arising under, or with respect to, this Consent Decree. However, the procedures set forth in this Section shall not apply to action by the Plaintiffs to enforce obligations of the Defendants where the Defendants have not timely disputed in accordance with this Section or other

provision of the Consent Decree.

32. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between or among the parties to the Dispute. The period for informal negotiations shall be twenty-one (21) days from the time the dispute arises, unless this period is extended by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute after notifying the other party by telephone.

33. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the parties to the dispute shall submit the dispute to non-binding mediation which shall be completed within twenty-one (21) days. The selection of an appropriate impartial mediator shall be agreed to by the parties or if the parties cannot agree shall be determined by the Court. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph or by mediation under this Paragraph, then the position advanced by the Plaintiffs shall be considered binding unless, within ten (10) working days after the conclusion of the informal negotiation period and any mediation, Defendants petition the Court to resolve the dispute. This ten-day period may be extended by written agreement of the parties to the dispute. Nothing herein shall be construed to allocate the burden of proof to be imposed by the Court in any dispute resolution proceeding under this Consent Decree.

34. Actions to involve the Court in the resolution procedures under this Section shall not extend, postpone, or affect in any way any obligations of Defendants under this Consent Decree that are not directly in dispute, unless the Parties by mutual consent or the Court determines otherwise. Stipulated penalties with respect to the disputed matter(s) shall continue to accrue, in the manner

provided for in Section XII, but payment shall be stayed pending resolution of a dispute over a request for stipulated penalties made in accordance with Section XII.

XIV. **FORCE MAJEURE**

35. The Defendants' obligation to comply with the requirements of this Decree shall only be deferred to the extent and for the duration that the delay is caused by a "Force Majeure Event."

A "Force Majeure Event" is defined as a delay or violation that has been or will be caused by circumstances beyond the control of Defendants or an entity controlled by Defendants and that could not have been foreseen and prevented by the exercise of due diligence.

36. If any Force Majeure Event occurs which causes or may cause Defendants to be in violation of any provision of this Decree, Defendants shall notify Plaintiffs in writing within ten (10) days of the time Defendants have notice of the event. The notice shall specifically reference this Section of the Decree and describe in detail the anticipated length of time the violation may persist, the precise cause or causes of the violations, the measures taken or to be taken by Defendants to prevent or minimize the violations and to prevent future violations, and the schedule by which those measures will be implemented. Defendants shall adopt reasonable measures necessary to avoid or minimize any such violation. Failure by Defendants to comply with the notice requirements of this Section shall constitute a waiver of the Defendants' right to obtain an extension of time for their obligations under this Section of the Decree based on such event.

A) If Defendants assert in their notice, and Plaintiffs agree, that the violation has been or will be caused by a Force Majeure Event, the time for performance of such requirement will be extended for a period not to exceed the actual delay resulting from such event, and stipulated penalties shall not be due for said delay.

B) Plaintiffs shall notify Defendants in writing of their agreement or disagreement with Defendants' claim of a Force Majeure Event within ten (10) days of receipt of the Defendants' notice under this Section.

C) If Plaintiffs disagree, Defendants may submit the matter for resolution pursuant to Section XIII of this Decree (Dispute Resolution). If Defendants submit the matter to the Court for resolution and the Court determines that the violation was caused by a Force Majeure Event, Defendants shall be excused from that violation (including the stipulated penalties for that violation) but only for the period of time the violation continues due to the circumstances that caused the Force Majeure Event.

D) Compliance with any requirement of this Decree by itself shall not constitute compliance with any other requirement. An extension of one compliance date based on a particular incident does not result in an automatic extension of other subsequent compliance date or dates. Defendants must make an individual showing of proof regarding each requirement for which an extension is sought.

E) Defendants shall bear the burden of raising and proving that any delay or violation of any requirement of this Decree was caused by a Force Majeure Event. Defendants shall also bear the burden of proving the duration and extent of any delay or violation found attributable to the circumstances that caused a Force Majeure event.

XV. EFFECT OF SETTLEMENT

37. In consideration of payment of civil penalties and performance of the operating requirements and projects required herein, Plaintiffs release all civil claims against and covenant not to sue or to take administrative action against Defendants and each of their affiliated assigns, affiliated successors, directors, officers, and employees, for injunctive relief and civil penalties arising from the discharges referenced in (1) the complaints and amended complaints in this action and Civil

Action No. 97-CV687B(W) in the Northern District of Oklahoma and (2) in Appendix A hereto. This release and covenant does not include claims for: cleanups regarding the settled discharges, reimbursement of any disbursements from the federal Oil Spill Liability Trust Fund, and natural resource damages. This release and covenant not to sue extends only to the Defendants and each of their affiliated assigns, affiliated successors, directors, officers, and employees, and does not extend to any other person. This release and covenant regarding civil penalties is effective upon the payment of the penalty as provided in Section VI (Payment of Civil Penalties), and as to injunctive relief is effective upon compliance with the requirements of Section VII (Operating Conditions) and Section VIII (Environmental Projects) of this Consent Decree.

38. In any subsequent administrative or judicial proceedings initiated by Plaintiffs for matters other than those released in Paragraph 37 neither Plaintiffs nor Defendants shall assert, and may not maintain, any defense or claim of waiver, res judicata, collateral estoppel, issue preclusion, or claim-splitting based upon any contention that the claim or issue was decided through any Party's agreement to, or the entry of, this Consent Decree.

39. Defendants hereby covenant not to sue, and agree not to assert any claims or causes of action, against the United States or any State of Texas government entity under the CWA, OPA, or any other federal or State law or regulation with respect to the discharges covered by Paragraph 37 including without limitation, any direct or indirect claim for reimbursement under any provision of law or for events arising out of removal activities in connection with the discharges.

XVI. NOTICES

40. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the

individuals at the addresses specified below, unless those individuals or their successors give written notice of a change. All notices and submissions shall be considered effective upon receipt, unless otherwise provided.

As to the United States:

To EPA:

Director, Superfund Division, Mail Code 6-SF
United States Environmental Protection Agency
Region VI
1445 Ross Avenue, Dallas, Texas 75202

and

To the United States Department of Justice:

Chief,
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20044
DOJ Reference # 90-5-1-1-4109

As to State of Texas:

To the Office of the Attorney General:

Office of the Attorney General, State of Texas
Attn: Chief, Natural Resources Division (MC-015)
P.O. Box 12548
Austin, TX 78711-2548

Notices to the Office of the Attorney General should reference this case and "AG#97-657333" .

and

To the Railroad Commission:

Railroad Commission of Texas
Attn: Lindil Fowler, General Counsel
P.O. Box 12967
Austin, Texas 78711-2967

As to Defendants:

General Counsel
Koch Industries, Inc.
41111 East 37th Street North
Wichita, Kansas 67220

XVII. RETENTION OF JURISDICTION

41. This Consent Decree shall be considered an enforceable judgment for purposes of post-judgment collection in accordance with the provisions of the Consent Decree, Rule 69 of the Federal Rules of Civil Procedure and other applicable federal statutory authority.

42. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to this Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIII (DISPUTE RESOLUTION).

XVIII. MODIFICATION

43. Material modifications to this Consent Decree may be made only as approved by the Court. Modifications that do not materially alter the Defendants' obligations under this Consent Decree may be made without consent of the Court by written agreement of the Parties.

XIX. LODGING AND PUBLIC COMMENT PERIOD

44. This Consent Decree shall be lodged with the Court for a period of at least thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. Plaintiffs reserve the right to withdraw or withhold consent to the Consent Decree if the comments disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Defendants agree not to oppose entry of this Consent Decree.

45. If for any reason the Court should decline to approve this Consent Decree in the form presented, the agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XX. EFFECTIVE DATE

46. The Effective Date of this Consent Decree is that date upon which it is entered by the Court.

XXI. TERMINATION

47. This Consent Decree shall be subject to termination upon motion by any party after Defendants have satisfied the requirements set forth herein for the time periods specified herein. At such time as Defendants believe that they have fulfilled these requirements, Defendants shall so certify to Plaintiffs. Not earlier than thirty (30) days after such certification, any party may apply to the Court for termination of the Consent Decree. This shall not terminate those provisions which by their terms have continuing effect.

XXII. DOCUMENTATION

48. The Parties agree that this Consent Decree constitutes a single, integrated written agreement expressing their entire agreement. Any prior statements, representations, or promises, written or oral, regarding the subject matter of this Consent Decree, have been, and are, superseded by this

Consent Decree.

49. The captions contained in this Consent Decree have been inserted for the purposes of convenience and reference only and shall not affect the construction of this Consent Decree or any of its provisions.

50. This Consent Decree may be executed in any number of counterparts, and each original executed counterpart shall have the same force and effect as the original instrument.

XXIII. SIGNATORIES

51. The undersigned representatives of Defendants, the State of Texas, and the United States certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

SO ORDERED THIS ____ DAY OF _____, 1999.

United States District Judge

THE UNDERSIGNED enter into this Consent Decree in the matter of United States et al. v. Koch Industries Inc., et al., H 95-1118 (Houston, Texas) and 97-CV687B(W) (Tulsa, Oklahoma).

FOR THE UNITED STATES OF AMERICA:

Date: _____

Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: _____

Michael D. Goodstein
Senior Attorney
Patrick M. Casey
Trial Attorney

Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044
(202) 514-1111

Mervyn M. Mosbacker
United States Attorney
Southern District of Texas

Date: _____

Gordon Speights Young
Assistant United States Attorney
S.D. Texas
P.O. Box 61129
Houston, Texas 77208-1129
(713) 567-9501

Stephen C. Lewis
United States Attorney
Northern District of Oklahoma

Phil Pinnell
Assistant U.S. Attorney
Northern District of Oklahoma
3900 U.S. Courthouse
333 W. 4th Street
Tulsa, Oklahoma 74103
(918) 581-7670

Date: _____

Steven A. Herman
Assistant Administrator for
Enforcement
U.S. Environmental Protection Agency
Washington, D.C.

Elyse DiBiagio-Wood
Attorney Advisor
Office of Regulatory Enforcement
Water Division

U.S. Environmental Protection Agency
Washington, D.C.

Date: _____

Gregg A. Cooke
Regional Administrator
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Date: _____

Gary Smith
Suzanne Smith-Roquemore
Enforcement Counsel
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Date: _____

Dennis Grams, P.E.
Regional Administrator, Region VII
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

(913)551-7006
(913)551-7925 fax

Date: _____

Julie Van Horn
Assistant Regional Counsel
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101
(913)551-7889
(913)551-7925 fax

THE UNDERSIGNED enter into this Consent Decree in the matter of
United States et al., v. Koch Industries Inc., et al., H 95-1118 (Houston, Texas) and 97-CV687B(W)
(Tulsa, Oklahoma).

FOR THE STATE OF TEXAS:

Date: _____

Linda S. Eads
Deputy Attorney General for Litigation

Texas Attorney General's Office
P.O. Box 12548
Austin, Texas 78711
(512) 463-2191

Date: _____

Thomas Edwards
Assistant Attorney General
Natural Resources Division
300 W. 15th Street
Austin, Texas 78701
(512) 475-4003

Date: _____

W. Wade Porter
Jeff Civins
Haynes and Boone, LLP
600 Congress Avenue , Suite 1600
Austin, Texas 78701
(512) 867-8400

Date: _____

Harrison Vickers
III Allen Center
The Vickers Law Firm
333 Clay, 49th Floor
Houston, Texas 77002
(713) 739-8989

THE UNDERSIGNED enter into this Consent Decree in the matter of
United States et al., v. Koch Industries Inc., et al., H 95-1118 (Houston, Texas) and 97-CV687B(W)
(Tulsa, Oklahoma).

FOR DEFENDANT KOCH INDUSTRIES, INC.:

Date: _____

B. R. Caffey
Executive Vice President - Operations
Koch Industries, Inc.

4111 E. 37th Street North
Wichita, Kansas 67220

FOR DEFENDANT KOCH GATHERING SYSTEMS
(A Division of Koch Pipeline Company, L.P.):

Date: _____

Patrick McCann
Senior Vice President
Koch Pipeline Company, L.P.
4111 E. 37th Street North
Wichita, Kansas 67220

FOR DEFENDANT KOCH PETROLEUM GROUP, L.P.,
for itself and as successor in interest to
CITRONELLE PIPELINE CO. and KOCH OIL COMPANY
By KPG/GP, Inc., General Partner,
(formerly Koch Refining Company, L.P.):

Date: _____

James L. Mahoney
Senior Vice President - Operations
KPG/GP, Inc., General Partner
Koch Petroleum Group, L.P.
4111 E. 37th Street North
Wichita, Kansas 67220

FOR DEFENDANT KOCH SERVICE COMPANY
(A Division of Koch Pipeline Company, L.P.):

Date: _____

Patrick McCann
Vice President
Koch Service Company
4111 E. 37th Street North
Wichita, Kansas 67220

FOR DEFENDANT KOCH MATERIALS COMPANY:

Date: _____

John Wadsworth
Vice President
Koch Materials Company
4111 E. 37th Street North
Wichita, Kansas 67220

FOR DEFENDANT CHASE PIPE LINE COMPANY:

Date: _____

Patrick McCann
Vice President
Chase Pipe Line Company
4111 E. 37th Street North
Wichita, Kansas 67220

FOR DEFENDANT BOW PIPE LINE COMPANY
(A Division of Koch Pipeline Company, L.P.):

Date: _____

Patrick McCann
Senior Vice President
Koch Pipeline Company, L.P.
4111 E. 37th Street North
Wichita, Kansas 67220

FOR DEFENDANT KOCH PIPELINE COMPANY, L.P.:

Date: _____

Patrick McCann
Senior Vice President
Koch Pipeline Company, L.P.
4111 E. 37th Street North
Wichita, Kansas 67220